Supreme Court, U.S.
FILED

07 - 57 JUN 0 8 2007

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

BERNARD CHRISTIAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals sanctioned an extreme departure from the accepted and usual course of judicial proceedings when it affirmed the District Court's refusal to grant a mistrial after a crucial prosecution witness provided damaging information during direct examination by the Government and refused to allow the defense an opportunity to cross examine him.

2. Whether the Court of Appeals sanctioned an extreme departure from the accepted and usual course of judicial proceedings when it affirmed the District Court's refusal to strike or give a curative instruction due to the Government's violation of Maryland Local Rule 107.14 and the District Court's refusal to bring the prosecution's violation to the jury's attention.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Bernard Christian ("Christian") respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on March 19, 2007.

OPINIONS BELOW

The unpublished, opinion, Order and Mandate of the United States Court of Appeals for the Fourth Circuit that gives rise to this petition is reprinted in Appendix at page 1. The Judgment entered against Christian by the United States District Court for the District of Maryland is reprinted in Appendix at page 13.

JURISDICTION

The United States District Court for the District of Maryland had jurisdiction over the trial of this matter pursuant to 18 U.S.C.A. § 3231. Christian was convicted and sentenced. Exercising appellate jurisdiction under 28 U.S.C. §§ 41 and 1291, the Fourth Circuit affirmed Christian's conviction and sentence by Order dated March 19, 2007. Christian's present petition is timely-filed under Supreme Court Rule 13.1 since it was filed within 90 days of the Fourth Circuit's entry of Judgment.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND LOCAL RULE INVOLVED

The Fifth Amendment of the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . .

Md. L. F. R. 107.14 which provides in pertinent part:

> 14. Speaking With Witness on the Stand
>
> Unless otherwise ordered by the Court, counsel... may not discuss testimony with the witness, including a party, while the witness is on cross, re-direct or re-cross examination.

STATEMENT OF THE CASE

This petition seeks review of a decision of the United State Court of Appeals for the Fourth Circuit sanctioning the District Court's refusal to declare a mistrial after a crucial Government witness, who provided damaging testimony on direct examination, refused to allow Christian's counsel to cross examine him; and the District Court's refusal to strike or give a curative instruction with respect to a Government witness, after the prosecution acknowledged a blatant violation of Maryland Local Rule 107.14.

This matter was captioned in the District Court as *United States v. Bernard Christian, et al.*, 1:03-cr-000351-CCB. The original indictment was returned by a Grand Jury on July 31, 2003, alleging Christian and others were involved in a drug conspiracy in violation of 21 U.S.C.A. § 846 (2004). A jury was empanelled, a trial was conducted and on November 5, 2004, the jury returned a verdict finding Christian guilty of all Counts of the Indictment. Christian was sentenced by the Trial Judge in February 2005. Christian filed a timely appeal of his conviction with the United States Court of Appeals for the Fourth Circuit and on March 19, 2007 the court, in an unpublished opinion, affirmed the conviction and sentence.

Background

The Conspiracy

The defendants in the case were Kenneth Mitchell, Ralph Williams and Christian who were alleged to be involved in a conspiracy to distribute cocaine in Baltimore, Maryland. The Government called, as witnesses, four indicted co-conspirators: James Murphy, Jr. ("Murphy"), Hugo Lopez ("Lopez), Patrick Giles ("Giles") and Charles Ransom ("Ransom").

Starting around February 2001, Ransom began purchasing small quantities of cocaine from Murphy. Over time, Ransom increased the quantity of drugs he was purchasing, and by September 2001, Ransom was purchasing one to two kilograms of cocaine per transaction. Thereafter, Ransom began purchasing quantities of cocaine from others in California and shipping it to Baltimore, Maryland via Federal Express.

Murphy, Lopez and Giles testified with respect to statements made by Ransom to them concerning the method and means by which he shipped the cocaine to Baltimore. Those witnesses indicated that Ransom told them that he had a cousin who worked for an overnight shipping company who assisted him with the deliveries in Baltimore.

Ransom's testimony

In opening argument, the government told the jury about Ransom's arrest, items found in his home and car, and discussed how these items might link Ransom to Christian. The government went on to advise the jury that Ransom would testify, explained the substance of Ransom's expected testimony, and suggested that Ransom moved to California because "business" was so lucrative. In anticipation of Ransom's testimony (both direct and cross) Christian's counsel felt compelled to, and in fact did, discuss Ransom during his opening statement.

On the fourth day of trial, after Murphy, Lopez and Giles testified at length about him and the Government introduced exhibits related to him, the Government finally called Ransom as a witness. Ransom testified that he had a close knit relationship with Christian (his cousin) and that they regularly communicated. He also admitted that he had been arrested in California and he had sold marijuana and cocaine. At this point Ransom refused to testify further and was never cross-examined. By the end of his aborted testimony Ransom effectively confirmed the Government's theory of the case. That is, the jury now heard that he was a cocaine dealer, that Christian was his cousin and that they were close. That, coupled with the above referenced testimony of Murphy, Lopez and Giles and the testimony of a Federal Express employee who was called by the Government to confirm that Christian did indeed work for

Federal Express during the period which the Government contends the conspiracy took place; allowed the jury to speculate that Christian was the "cousin" used by Ransom to receive the cocaine that he shipped from Los Angeles via Federal Express.

In response to Christian's request for a mistrial, the Trial Judge asserted that Ransom's testimony was "harmless background information". However, Ransom's testimony, placed in the context of the entire trial, created an irrefutable impression that Christian was involved with Ransom's illegal activity. Consider, the fact that the government told the jury in opening statement what it expected Ransom to say; and during Ransom's testimony the government suggested that it was a "difficult day" for Ransom having to testify against Christian. Ransom refused to testify, and the government reinforced Ransom's refusal to identify Christian by standing behind him (Christian), calling out his (Christian's) name and demanding that Ransom identify him.

In this light, since Ransom was the central figure in the government's case against Christian, Ransom's silence at trial was more damming to Christian than had he simply answered the government's questions. Since the Trial Judge allowed the hearsay evidence of Giles, Murphy and Lopez, the Government did not need anything more from Ransom to establish the link with Christian. The Government therefore received the benefit of Ransom's testimony. The Government was allowed to "have its cake and eat it too".

Christian, however, was denied the right to cross examine Ransom. That cross examination would have revealed Ransom's motive to lie, deficiencies in his and the testimony of Murphy, Lopez and Giles and potentially a number of other flaws in the Government's case. That is the purpose of cross examination. No curative instruction could

cure the harm caused by Ransom's aborted testimony since the government's opening, Ransom's presence, and the stricken testimony created an illusion of "guilt by association" that Christian could not cross-examine or dispel.

Finally, at the conclusion of the trial, the government further exacerbated the prejudice from Ransom's failure to testify in its closing argument. The government again discussed items found in Ransom's house, referred to the number of Ransom's drug purchases, suggested everyone associated with Ransom panicked when he was arrested, recounted testimony from the cooperators directly attributing statements to Ransom, and linked Christian to Ransom through these statements and Ransom's testimony.

Morcomb testimony

The government also called Baltimore City Detective John Morcomb to provide testimony with respect to the financial background of Christian and the other defendants. Morcomb testified about many documents seized from defendants' homes, which ostensibly served to make a connection between defendants' frequent trips to California, the packages having been shipped from California, and the defendants' unexplained wealth. On cross-examination, however, it was reveled that Morcomb was unfamiliar with some of the documents and that a cumulative summary he was relying upon was inaccurate.

Evidence of illegitimate income is common in drug conspiracy trials, but it is also potentially prejudicial if used improperly. Morcomb's testimony concerning the defendants' wealth was calculated to demonstrate their illegal income. It created an inference (in conjunction with the other evidence at trial) that defendants were involved in an illegal drug conspiracy.

At the conclusion of Morcomb's cross-examination, the government began its re-direct examination, but was interrupted when the Trial Judge called for an adjournment. Later that day, the government spent one to two hours coaching Morcomb, telling him what questions were going to be asked, and which documents were going to be used the following day. This was a clear violation of Md. L. F. R. 107.14. Not surprisingly, when his re-direct testimony resumed, Morcomb was prepared with crisp responses bolstered by the government's exhibits.

Defendants did not request a mistrial after the government's improper contact with Morcomb, but rather made three reasonable requests: strike Morcomb's testimony entirely, strike the second day of Morcomb's testimony, or give a credibility instruction at the conclusion of the case to the effect that the jury could consider the fact that the government violated LR 107 in weighing the credibility of Morcomb's testimony. The District Court refused all of these requests.

The Fourth Circuit Opinion

On appeal, the Fourth Circuit affirmed Christian's conviction and sentence. The Court found that the District Court's curative instruction somehow cured the violation of Christian's Sixth Amendment rights.

The Fourth Circuit agreed with the District Court in finding that no harm resulted from the Government's violation of the local rule because the defendants could have exposed the Government's improper conduct to the jury on re-cross and at closing. The only way, however, to have protected Christian and ensured the public trust in the judicial system was to alert the jury of the Prosecutor's

misconduct so that it could have considered that misconduct during its deliberations.

The District Court violated Christian's right of Confrontation when it failed to declare a mistrial and violated his right of Due Process by failing to take appropriate action to correct the harm caused by the Government's blatant and admitted violation of the Local Rule. Because the Fourth Circuit's ill-based decision sanctioned the District Court's departure from the accepted and usual course of judicial proceedings, this Court must exercise its supervisory powers.

REASONS FOR GRANTING THE WRIT

I. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT SANCTIONED A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY THE LOWER COURT AS TO CALL FOR THE EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION

The proceedings below departed from the usual and accepted course of Judicial Proceedings in two respects. First, a substantial departure occurred when the trial court failed to declare a mistrial when Christian was denied his Constitutional right of confrontation. This Court has made clear that the right of cross examination is included in the right of an accused in a criminal case to confront a witness against him. *Smith v. State of Illinois*, 390 U.S. 129, 88 S.Ct. 748, 19 L.Ed.2d 956 (1968). The Court has also held that a denial of cross-examination without waiver is constitutional error and no amount of showing of want of prejudice will

cure it. *Id.* The right of an accused to confront his accuser is one the most sacred rights protected by the constitution and must be preserved at all costs. The Fourth Circuit's opinion erodes that right and this Court should protect it.

Without question, Ransom provided damaging testimony against Christian and Christian was not afforded an opportunity to confront him. Christian was deprived a fair trial which contributed to the jury's decision to convict. The fact that the Government did not complete its direct examination is of no moment. The testimony provided was enough to give Christian the right to cross examine.

Christian raised this issue in his appeal to the Fourth Circuit. The court failed to address the violation of Christian's Sixth Amendment right and instead focused on the Trial Judge's "curative instruction" finding that any harm caused by the aborted testimony was cured by the instruction. The violation of Christian's Sixth Amendment right could not be cured by an instruction.

This Court has held that a jury will normally be presumed to follow instructions to disregard inadmissible evidence inadvertently presented to it unless there is an overwhelming probability that a jury would be unable to follow the court's instructions and a strong likelihood that the effect of the evidence would be devastating. *Greer v Miller*, 483 U.S. 756, 107 S. Ct. 3102, 97 L.Ed.2d 618 (1987). Looking at the trial as a whole, there is absolutely no reason to presume that the jury disregarded any portion of the testimony provided by the person whom the Government described as the lynchpin of the conspiracy. The jury unquestionably considered it and the Trial Judge should have realized that it would do so in spite of the "curative instruction" given. The violation of Christian's constitutional right, which was sanctioned by the United

States Court of Appeals for the Fourth Circuit, is clearly a departure from the accepted and usual course of judicial proceedings and must be addressed by this Court.

Second, the Trial Judge's failure to take any remedial action following the government's improper contact with Detective Morcomb deprived Christian of a right to a fair trial. The District Court, once confronted with the prosecutor's actions should have struck Morcomb's testimony (in whole or in part) and/or, given a credibility instruction at the conclusion of the case to the effect that the jury could consider the fact that the government violated LR 107 in weighing the credibility of Morcomb's testimony.

Moreover, this court must address the denial of Christian's right of due process caused by the Government's blatant violation of LR 107. During the Fourth Circuit argument when questioned about the violation Assistant United States Attorney Warwick acknowledged that he was aware of the rule at the time that he was violating it, that he knew that he was violating it when speaking to Morcomb and confessed that he did it out of "frustration". This Court has recognized that prosecutorial misconduct may "so infect the trial with unfairness as to make the resulting conviction a denial of due process." *Greer* at 107 S. Ct. 3109 (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S. Ct. 1868, 1871, 40 L. Ed. 2d 431(1974).). This Court must do all that it can to make certain, especially when the rights of the accused in criminal proceedings are involved, to ensure that the Trial Judge and the Prosecutor adhere to the letter of rules which have been promulgated to protect the parties. In the present case the Government's intentional violation of this very important local rule and the Trial Judge's refusal to do anything meaningful to correct this intentional act certainly raise public policy concerns which are best addressed by this Court.

The Trial Judge's refusal of these requests and the Assistant United States Attorney's knowing and intentional violation of an important Local Rule, which were sanctioned by the United States Court of Appeals for the Fourth Circuit, were clear departures from the accepted and usual course of judicial proceedings and must be addressed by this Court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,
COZEN O'CONNOR

BY:_____
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App. 1

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No-05-4199

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KENNETH MITCHELL,

Defendant - Appellant.

No. 05-4200

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BERNARD NATHANIEL CHRISTIAN,

Defendant - Appellant.

No. 05-4259

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RALPH K. WILLIAMS,

Defendant - Appellant.

Appeals from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, District Judge. (CR-03-351)

Argued: October 26, 2006 Decided: March 19, 2007

Before TRAXLER, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished opinion. Judge Shedd wrote the opinion, in which Judge Traxler and Judge Gregory joined.

ARGUED: Robert Jay Feldman, Baltimore, Maryland; Arnold Christopher Joseph, COZEN O'CONNOR, Philadelphia, Pennsylvania, for Appellants. James G.

Warwick, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee. **ON BRIEF**: Peter T. Kandel, Nelson R. Kandel, KANDEL & ASSOCIATES, P.A., Baltimore, Maryland, for Appellant Kenneth Mitchell; Harold I. Glaser, Baltimore, Maryland, for Appellant Ralph K. Williams. Rod J. Rosenstein, United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

App. 4

SHEDD, Circuit Judge:

Bernard Christian, Ralph Williams, and Kenneth Mitchell ("Defendants") were convicted by a federal jury and sentenced to 188, 235, and 360 months, respectively, for conspiracy to distribute more than five kilograms of cocaine in violation of 21 U.S.C. § 846. The Defendants now appeal their convictions and sentences. For the following reasons, we affirm.

I

The evidence at trial tended to establish that the Defendants were involved in a drug trafficking conspiracy, distributing in Baltimore drugs that originated in Los Angeles. In addition to the Defendants, the following individuals were key players in the conspiracy: Charles Ransom, Hugo Lopez, James Murphy, and Patrich Giles. The most inculpatory evidence against the Defendants was the testimony of these co-conspirators.

Law enforcement officials first discovered the conspiracy when Murphy was arrested in Baltimore in connection with a drug trafficking scheme that is unrelated to this case. Murphy cooperated with law enforcement officials, who eventually intercepted several Federal Express packages labeled for shipment from Los Angeles to Johns Hopkins Hospital in Baltimore. Many of the packages contained cocaine hidden inside empty computer cases. Christian, who serviced the Johns Hopkins route as a Federal Express driver, was responsible for pulling these packages off the line instead of delivering them to the specified address. Sometime after these initial packages were intercepted, several additional packages containing large quantities of cash and bearing Christian's handwriting or Federal Express employee number were seized. Specifically, a Federal

Express package that was addressed to Ransom and bore Christian's employee number and handwriting was damaged in transit to Los Angeles. The package was full of cash, and Ransom was arrested when he attempted to claim it. A search of Ransom's house revealed packages sent by Williams and Mitchell, in addition to vacuum-sealed bags full of cash; the bags were similar to ones previously found in Christian's garbage. The search of Ransom's house also revealed Federal Express and United Parcel Service packages that contained large amounts of cash and bore Christian's handwriting. Ransom's cooperation with law enforcement officials ultimately led to the arrest of Lopez. Giles, a partner of Murphy and Lopez, was also arrested in relation to this conspiracy.

II

The Defendants argue that the district court erred in numerous ways. We address herein only the four errors that require detailed analysis.[1] These alleged errors were raised below in the form of motions to strike or exclude testimony, requests for jury instructions, and motions for mistrial. Accordingly, we review the district court's rulings for abuse of discretion. *United States v. Rivera*, 412 F.3d 562, 572 (4th Cir. 2005) (motion to strike or exclude testimony); *United States v. Hurwitz*, 459 F.3d 463, 474 (4th Cir. 2006) (request for jury instruction); *United States v. Brewer*, 1 F.3d 1430, 1437 (4th Cir. 1993) (motion for mistrial).

A.

The Defendants first argue that the district court improperly applied Fed. R. Evid. 801 (d) (2) (E) by admitting co-conspirators' statements to prove their

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[1] We have considered the Defendants' other arguments and find them to be without merit.

participation in the drug conspiracy.[2] A significant portion of the Government's case was based on out-of-court statements made by Ransom to Lopez, Murphy, and Giles. Such statements, which would otherwise be inadmissible hearsay under Fed. R. Evid. 801 and 802, may be admitted if the district court finds "(1) that there was a conspiracy involving the declarant and the party against whom admission of the evidence is sought and (2) that the statements at issue were made during the course of and in furtherance of that conspiracy." *United States v. Blevins*, 960 F.2d 1252, 1255 (4th Cir. 1992); *see also* Fed. R. Evid. 801(d)(2)(E) (statement offered against a party is not hearsay if it is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy").

The Defendants' chief contention is that Ransom's statements to Lopez, Murphy, and Giles were not during the course of and in furtherance of the conspiracy. These co-conspirators testified that they were not concerned with the handling of the cocaine after Ransom paid for it and took possession of it. Thus, the Defendants argue that Ransom's incriminating statements about their activity in Baltimore did not further the conspiracy.

We find the Defendants' argument unpersuasive. Ransom made the statements throughout the course of the conspiracy in reference to the specific drugs being purchased and the particular method of distribution. At the very least, these statements assured coconspirators that a sufficient demand existed for the Los Angeles cocaine supply. Further, these statements certainly gave the Los Angeles co-conspirators peace of mind that their trafficking operation had evaded detection -- a vital concern for any illicit enterprise. We therefore hold that the district court did not

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[2] We assume for the sake of argument that the Defendants' motion in limine properly preserved the objection.

abuse its discretion in admitting testimony regarding conversations between Ransom and his co-conspirators; Ransom's statements were clearly made in the course and furtherance of the conspiracy and otherwise satisfy the requirements of Rule 801(d)(2)(E).

B.

The Defendants next assert that the district court erred by refusing to instruct the jury on how properly to weigh evidence of drug conspiracies in which the Defendants did not participate, thereby causing an impermissible variance. Generally, a variance occurs when the evidence produced at trial demonstrates criminal activity materially different than the offense alleged in the indictment. *United States v. Kennedy*, 32 F.3d 876, 883 (4th Cir. 1994). A variance requires reversal "only if the appellant shows that the variance infringed his substantial rights and thereby resulted in actual prejudice." *Id.* (internal quotations omitted). In a conspiracy case, actual prejudice must be shown by demonstrating that a "spillover effect" occurred, which caused the jury to transfer evidence from one conspiracy to a defendant who participated in a different conspiracy. *United States v. Ford*, 88 F.3d 1350, 1360 (4th Cir. 1996).

The Defendants maintain that the Government's case proved the existence of five clearly distinct drug conspiracies, only one of which involved the Defendants. We disagree because the Defendants' theory artificially compartmentalizes a single, broad conspiracy. The five "distinct" conspiracies are nothing more than varying permutations of substantially the same players. Ransom, the Defendants' chief supplier and a primary figure in the drug ring, was involved in four of the so-called distinct conspiracies. Lopez sold cocaine to Ransom, as well as directly to Williams and Mitchell, and Lopez was involved

in nearly all of the drug transactions at issue in this case. Murphy and Giles were cohorts of Ransom and Lopez, and they knew that Williams and Mitchell were associates of Ransom who sold cocaine in Baltimore. Finally, everyone in the conspiracy knew that Ransom had a contact, Christian, who worked at Federal Express or United Parcel Service pulling cocaine shipments off the distribution line. Accordingly, we conclude that no variance occurred because the evidence tended to establish the existence of only one conspiracy.[3] Therefore, the district court did not err in refusing to give a multiple conspiracies instruction. See *United States v. Bowens*, 224 F.3d 302, 308 (4th Cir. 2000) (holding that it was not error for the district court to refuse to instruct the jury on multiple conspiracies where evidence did not support the existence of multiple conspiracies).

C.

The Defendants next contend that the district court erred in its handling of Ransom's appearance as a witness. Ransom was expected to testify against the Defendants pursuant to a plea agreement; however, after giving only minimal testimony about his relationship with the Defendants and his past experience as a drug dealer, Ransom refused to testify further. The Defendants moved for a mistrial on the basis of the prejudicial effect of Ransom's abandoned testimony. Though the district court denied the motion for mistrial, it promptly struck Ransom's testimony

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[3] We note that Murphy's initial arrest arose out of a truly distinct conspiracy, which led him to inform authorities about the conspiracy at issue in this case. However, when evidence of the distinct conspiracy was introduced for purposes of establishing credibility, the district court gave a proper limiting instruction that prevented any spillover effect.

and instructed the jury to disregard his appearance on the witness stand.

The Defendants inaccurately characterize the district court's curative instruction as permissive instead of mandatory. Reading the instruction as a whole, the district court clearly directed the jury that they were required to disregard Ransom's brief appearance as a witness. The jury is presumed to have followed this curative instruction. *Hinkle v. City of Clarksburg*, 81 F.3d 416, 427 (4th Cir. 1996). Therefore, the district court did not abuse its discretion in denying the Defendants' motion for mistrial.

D.

Finally, the Defendants assert that the district court erred in denying Defendants' motion to strike or give a curative instruction due to the Government's violation of Maryland Local Rule 107.14. Maryland Local Rule 107.14 prohibits, *inter alia*, counsel conferring with a witness during a break in re-direct examination. Government counsel admits violating this rule by conferring with Detective Morcomb, a witness who testified regarding summaries of documentary evidence, during an overnight recess in re-direct examination.

As the district court correctly noted, the Defendants had every opportunity to expose the Government's improper conduct in front of the jury on both re-cross examination and at closing argument. We believe that the jury could accurately determine the credibility of Morcomb, who apparently was obviously more familiar with documents after conferring with Government counsel. Further, because jurors were allowed independently to review the documents about which Morcomb was testifying, no harm resulted from any testimony given about such documents. We therefore hold that the district court did not abuse its discretion in

refusing to strike Morcomb's testimony and declining to instruct jurors that they could weigh the local rule violation in their deliberations.

III

For the foregoing reasons, we affirm the convictions and sentences of the Defendants.

AFFIRMED

App. 11

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED: April 10, 2007

No. 05-4199

CR-03-351

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KENNETH MITCHELL

Defendant – Appellant

No. 05-4200

CR-03-351

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BERNARD NATHANIEL CHRISTIAN

Defendant – Appellant

No. 05-4259

CR-03-351

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RALPH K. WILLIAMS

Defendant - Appellant

M A N D A T E

The judgment of this Court, entered 3/19/07, takes effect this date.

A certified copy of this Court's judgment and a copy of its decision are issued to the district court and constitute the mandate of this Court.

/s/ Patricia S. Connor

CLERK

Judgment in a Criminal Case

United States District Court

District of Maryland

Case Style: United States of America, Plaintiff v. Bernard Nathaniel Christian, Defendant

Case Number: CCB-03-0351

USM Number: 40916-037

Counsel for Defendant: Roland Walker

Counsel for Plaintiff: James Warwick

The Defendant was found guilty on count 1 (Second Superseding Indictment) after a plea of not guilty.

Title & Section: 21:846

Nature of Offense: Conspiracy to distr. and possess w/intent to distr. a mixture containing Cocaine, a Sch. II NCS.

Date Offense Concluded: 03/31/03

Count Number(s):

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and US v. Booker, __ S.Ct. __, 2005 WL 50108 (Jan. 12, 2005).

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all

fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Date of Imposition of Judgment: February 4, 2005

Signed by: Catherine C. Blake, U.S. District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 188 months.

The defendant is remanded to the custody of the United States Marshal.

Supervised Release

Upon release from imprisonment, the defendants shall be on supervised release for a term of 5 years.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

A. Statutory Conditions of Supervised Release

1) The defendant shall not commit any federal, state or local crime.

2) In any felony case, the defendant shall not possess a firearm or ammunition as defined in 18 U.S.C. §921.

3) The defendant shall not illegally use or possess a controlled substance.

4) The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

__x__ The above drug testing condition is suspended based on the court's determination that the defendant poses a low frisk of future substance abuse. (Check if applicable.)

5) If this judgment imposes any criminal monetary penalty, including special assessment, fine, or restitution, it shall be a condition of supervised release that the defendant pay any such monetary penalty that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

B. Standard Conditions of Supervisions

1) The defendant shall not leave the judicial district without the permission of the court or probation officer;

2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) The defendant shall support his or her dependents and meet other family responsibilities;

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) The defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) The defendant shall refrain from excessive use of alcohol;

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any persons convicted of a felony unless granted permission to do so by the probation officer;

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

12) The defendant shall notify the probation officer within 72 hours of being charged with any offense, including a traffic offense;

13) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court;

14) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by

the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Criminal Monetary Penalties

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

Totals:

Assessment: $100.00

Fine

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the 15th day after the date of judgment, pursuant to 18 V.S.C. §3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 V.S.C. §3612(g).

x The court has determined that the defendant does not have the ability to pay a fine; therefore, a fine is waived.

Restitution

x The defendant shall make restitution to the following payees in the amounts listed below.

Schedule of Payments

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; and (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows

A x In full immediately.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.